IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4906 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVANIDAN KISHORDAN GADHVI

Versus

COLLECTOR BK

Appearance:

MS KUSUM M SHAH for Petitioner

MS. ACHARYA, AGP, for Respondent No. 1, 3

MR MB THAKORE for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/09/2000

ORAL JUDGEMENT

Bhavanidas Kishordan Gadhvi, petitioner, has filed this petition under Article 227 of the Constitution of India challenging the legality and validity of the order dated 5.6.1992 passed by the Deputy Secretary

(Appeal), Revenue Department, State of Gujarat as well as the order of the Collector dated 6.8.1991 whereby the authorities have cancelled and set aside the order dated 12.2.1987 passed by the Deputy Collector by which he has regularised the land in question which was allotted to the petitioner.

2. The facts giving rise to this petition are as under:-

2.1 There is a land situated at Vandha Kotar Land (Ravine) admeasuring 1 acre 0 gunthas (hereinafter referred to as `the suit land'). In the petition it has been stated that the petitioner was cultivating the suit land since 1973 and the petitioner is in possession of the suit land.

2.2 In the petition it has been stated that on 16.7.1984 the petitioner made an application to the Mamlatdar Danta stating that since 1973 he is cultivating the suit land and till today he is in possession of the said land. He is poor agriculturist and he is not having sufficient land to maintain his big family. The petitioner therefore requested to regularise his long possession and cultivation of the suit land and to grant the same to the petitioner on payment of occupancy price.

2.3 It is to the great shock and surprise of the petitioner that he did not receive any reply to his application from the Mamlatdar for regularisation but the Mamlatdar Danta initiated proceedings under Section 61 of the Bombay Land Revenue Code by issuance of notice dated 16.1.1985 as to why action should not be taken against him. The Mamlatdar after going through the papers put up by the Circle Inspector held that the petitioner was cultivating suit land without permission from 1973-74 to 1984 and fined Rs. 81.90 for cultivation without permission.

2.4 The petitioner thereafter paid fine of Rs. 81.90 on 21.5.1985. After payment of fine, the petitioner made again application before the Mamlatdar Danta on 8.7.1985 to regularise his long possession and cultivation of the suit land. He stated that the land was uneven, Kotar land and he toiled hard. He had incurred expenses of Rs. 8,000/- to Rs. 10,000/- to make the land even and cultivable and has planated trees in the land. The petitioner showed his willingness to carry out whatever the authority pleased to direct.

2.5 Thereafter, the petitioner preferred Land Appeal

No. 85 of 1986 before the Deputy Collector, Palanpur, to set aside the order of the Mamlatdar. The Deputy Collector after hearing the petitioner was pleased to hold the following points in favour of the petitioner.

(1) The panchkyas showing four mango trees of the petitioner standing on the suit land

(2) Mafabhai Kalubhai (Respondent No. 2) has applied on 25.10.1985 for grant of the suit land but there is no mention in papers of his possession of the suit land,

(3) It transpired from papers that the petitioner is in possession of the suit land since long. Mamlatdar's order in Daban Case has held that the petitioner is in possession of the suit land since 1973-74 to 1983-84.

(4) The petitioner has paid fine on 26.5.1985 for cultivation of the suit land.

2.6 The market value of the suit land as per panchkyas is assessed at Rs. 500/- per acre, by order dated 12.2.1987 granted 1 acre of Vandha Kotar (suit) land to the petitioner subject to the conditions mentioned therein. One of the conditions being payment of Rs. 2,500/- being two and half times of occupancy price valued at Rs. 1000/- per acre instead of Rs. 500/- as per panchkyas.

2.7 It has been stated in the petition that the petitioner paid Rs. 2500/occupancy price for the suit land on 23.2.1987 and receipt has been issued by Talati/Mantri. Thereafter on 19.3.1987 the petitioner was officially put in possession of the suit land by Circle Inspector, Danta and Kabja Pavti and order was passed on the same day.

2.8 It has been stated that the petitioner got constructed pacca well in the suit land. Excavation work was done by one Ujambhai Hamirbhai on payment of Rs. 2250/-. One Nathabhai Bhyachandbhai constructed pacca well and was paid Rs. 15,000/- as labour charges. In all towards construction of pacca well the petitioner spent Rs. 25,000/-. The construction was started in 1991 January and was completed by 18.3.1991.

2.9 It has been stated that the Collector, Banaskantha, has issued a notice dated 14.5.1991 calling upon the petitioner to show cause why the order of the Deputy Collector dated 12.2.1987 should not be set aside

for reasons stated in the notice.

2.10 It has been stated that the Collector, Banaskantha, by order dated 6.8.1991 was pleased to set aside the order of the Deputy Collector dated 12.2.1987 and directed to take possession by removing the petitioner from the suit land.

3. Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred revision before the State Government. The Deputy Secretary (Appeal), Revenue Department, State of Gujarat by his order dated 5.6.1992 was pleased to confirm the order of the Collector and thereby rejected the revision application filed by the petitioner.

4. Ms. K.M. Shah, learned advocate for the petitioner stated that in this case the Deputy Collector had passed order dated 12.2.1987 in favour of the petitioner. Thereafter the Collector initiated proceedings to set aside the order by issue of a show cause notice dated 14.5.1991. In those years the petitioner had made effort to cultivate the land and spent huge amount for the same. The learned advocate for the petitioner has relied on the judgement of the Supreme Court in the case of STATE OF GUJARAT VS. PATEL RAGHAV NATHA reported in 10 G.L.R. 992. She has relied on para 13 at page 997 which reads thus:-

"Para 13 - It seems to us that Sec. 65 itself indicates the length of the reasonable time within which the Commissioner act under Sec. 211. Under Sec. 65 of the Code if the Collector does not inform the appellant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sec. 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order and

it seems to us that this order was passed too late."

4.1 The learned counsel for the petitioner has further relied on the judgement of this Court in the case of BHAGWANJI BAWANJI VS. STATE reported in 12 GLR 156. After referring to the judgement of the Hon'ble Supreme Court in Patel Raghav Natha's case (supra) at page 164 and also after referring to the judgement of Bombay High Court in the case of STATE OF BOMBAY VS. CHHAGANLAL GANGARM LAVAR reported in 56 Bom. L.R. 1084 and after considering the period of limitation provided under the Limitation Act, the Division Bench on page 167 has observed as follows:-

"In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected by such act or order passed by the officer of the Government could file a suit and there is no reason why the State Government also should not do so, if it were so affected by any such order such as the order of the Commissioner in the present case by revising the same under Sec. 211 of the Land Revenue Code. The maximum period, it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time as is sought to done in this case viz., after about seven years or so, cannot be called at all reasonable. It had thus no right to revise the Commissioner's order after a period of seven years or so."

4.2 In this case as indicated earlier, the order of the Deputy Collector is 12.2.1987 whereas the Collector passed order on 6.8.1991. Admittedly, the proceeding have been initiated after 4 1/2 years and therefore the judgement relied on by the learned advocate for the petitioner squarely applies to this case as the proceedings initiated by the Collector is beyond the reasonable time and therefore, the same are illegal and bad in law in view of the judgements of the Apex Court as well as Division Bench of this court.

5 In view of the above, the order of the Collector dated l6.8.1991 and the order of the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 5.6.1992 are quashed and set aside. The petition is allowed. Respondent Nos. 1 and 3 are restrained from dispossessing the petitioner from the suit land. Rule is

made absolute with no order as to costs.

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